



To the Honorable Council  
City of Norfolk, Virginia

April 26, 2016

From: David S. Freeman, AICP  
Director of General Services

**Subject:** Renewal of Lease Agreement  
between the City of Norfolk and Rover  
Marine, Inc.

Reviewed: Sabrina Joy-Hogg  
Sabrina Joy-Hogg, Deputy City Manager

**Ward/Superward:** 2/6

Approved: Marcus D. Jones  
Marcus D. Jones, City Manager

**Item Number:**

**PH-8**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Rover Marine, Inc.  
224 E. Main St.  
Norfolk, VA

III. **Description:**  
This agenda item is an ordinance to approve a lease agreement between the City of Norfolk (the "city") and Rover Marine, Inc. ("Rover") for lease of city-owned property.

IV. **Analysis**  
This lease agreement will permit Rover to continue to lease and use the city-owned space located at 224 E. Main Street as a business office for their sailing boat and cruise operations. Rover provides local sailing and cruise tours along the Elizabeth River and Hampton Roads Harbors. The term of the proposed lease is three (3) years, commencing on May 1, 2016, or upon the effective date of any authorizing ordinance, and terminating on April 30, 2019. Rover would also have the right to renew this lease for two (2) additional one (1) year terms.

V. **Financial Impact**  
The rent will be subject to a 3 percent annual escalation.

Term	Monthly Rent	Annual Rent
05/01/2016 – 04/30/2017	\$1,163.21	\$13,958.52
05/01/2017 – 04/30/2018	\$1,198.11	\$14,377.32
05/01/2018 – 04/30/2019	\$1,234.05	\$14,808.60
05/01/2019 – 04/30/2020	\$1,271.07	\$15,252.84
05/01/2020 – 04/30/2021	\$1,309.13	\$15,709.56

Liability insurance for 224 E. Main Street (Rover Marine, Inc.)	The City has been named as an additional insured in the amount of \$1,000,000 per occurrence; therefore, there should be no financial risk to the City.
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**VI. Environmental**

There are no known environmental issues associated with this property.

**VII. Community Outreach/Notification**

Public notification for this agenda item was conducted through the city's agenda notification process.

**VIII. Board/Commission Action**

N/A

**IX. Coordination/Outreach**

This letter and ordinance have been coordinated with the Department of General Services – Office of Real Estate and the City Attorney's Office.

**Supporting Material from the City Attorney's Office:**

- Ordinance
- Exhibit A to Ordinance – Proposed Lease Agreement
- Floor plan

3/22/2016 -wld

Form and Correctness Approved:

By

Office of the City Attorney

Contents Approved:

By

DEPT. General Services

NORFOLK, VIRGINIA

## ORDINANCE No.

AN ORDINANCE APPROVING A LEASE AGREEMENT WITH ROVER MARINE, INC. FOR THE LEASE OF CITY OWNED PROPERTY LOCATED AT 224 E. MAIN STREET.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Lease Agreement, a copy of which is attached hereto as Exhibit A, between the City of Norfolk ("City") and Rover Marine, Inc. ("Rover"), whereby the City leases certain property located at 224 E. Main Street to Rover for use as a business office, is hereby approved.

Section 2:- That the City Manager and other proper officers of the City are authorized to execute the Lease on behalf of the City and to do all things necessary and proper to carry out its terms.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Lease Agreement as he may deem advisable in order to carry out the intent of the Council.

Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.



## EXHIBIT A TO ORDINANCE

### LEASE AGREEMENT

**THIS LEASE AGREEMENT**, ("Lease"), made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia, ("Landlord"), and **ROVER MARINE INC.**, ("Tenant").

#### WITNESSETH:

Landlord, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained, to be paid, kept and performed by Tenant, has demised and leased and does hereby demise and lease unto Tenant, and Tenant does hereby lease from Landlord, the property owned by Landlord known as 224 East Main Street in Norfolk, Virginia ("Demised Premises"). The Demised Premises consist of 954 square feet, and are shown in Exhibit A, attached to and made a part hereof.

1. **TERM OF LEASE.** Landlord leases unto Tenant and Tenant hires from Landlord the Demised Premises for the term of three (3) years ("Term") to commence May 1, 2016, or upon the effective date of any authorizing ordinance, whichever shall last occur ("Commencement Date"), and to end on the last day of April, 2019, ("Termination Date"), subject to the default provisions herein contained. Tenant shall have the right to renew this Lease for two (2) additional one (1) year terms, under the same terms and conditions of this Lease, provided, however, that the Tenant at the time of such renewal shall not be in default of any of the covenants and agreements contained in this Lease, and further provided that the Tenant shall have provided written notice to Landlord of Tenant's intention to exercise its right to renew the Lease no later than ninety (90) days prior to the expiration of the current lease term.

2. **USE.** Tenant covenants and agrees to use and occupy the Demised Premises as a business office and for no other purpose.

3. **ACCEPTANCE OF PREMISES.** Tenant acknowledges that it is familiar with the Demised Premises and hereby agrees to accept the Demised Premises in their present condition, as is. Tenant further acknowledges that neither Landlord nor anyone on Landlord's behalf has made any representations or warranties with respect to the condition of the Demised Premises.

Tenant understands that the Demised Premises are part of the Main Street Parking Garage complex and that other portions of the building will be utilized in a manner consistent with that purpose.

4. **BASE RENT.** The rental payments ("Base Rent") will be payable in equal monthly installments of \$1,163.21 for the first year of the term of this Lease.

During the remaining years of this Lease, including any optional renewal terms, the lease rates shall be adjusted three percent (3%) annually in the following manner:

May 1, 2017 to last day of April, 2018	\$1,198.11/mo
May 1, 2018 to last day of April, 2019	\$1,234.05/mo
May 1, 2019 to last day of April, 2020	\$1,271.07/mo
May 1, 2020 to last day of April, 2021	\$1,309.13/mo

Each monthly installment of rent shall be made promptly in advance of the first day of each and every month during the term of this lease without demand and without offset or deduction, together with such additional rent and other charges required to be paid by Tenant as are hereinafter set forth in this Lease ("Additional Rent").

No payment by Tenant or receipt by Landlord of a lesser amount than the Base Rent or Additional Rent stipulated in this lease shall be deemed other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or payment, or any writing accompanying any check or payment of such rent, be deemed an accord and satisfaction, and

Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

The rent payments shall be paid by check or money order made payable to the City Treasurer and sent to the Office of Real Estate, 232 East Main Street, Norfolk, Virginia, 23510.

5. **ADDITIONAL RENT.** Additional Rent payable by Tenant shall include:

(a) all taxes, leasehold taxes, assessments, utilities (as noted in Section 10) and other governmental charges, excluding charges arising from hazardous substances deposited prior to Tenant's tenancy assessed against or levied upon the Demised Premises or related to the use or occupancy thereof;

(b) all other expenses and charges which, during the term hereof, shall arise, be levied, assessed or imposed upon or against the Demised Premises as an incident of the ownership thereof and which are of the kind customarily paid by owners of land and buildings by reason of such ownership, it being the intention hereof that, during the term of this Lease, Tenant shall be chargeable with and shall pay all sums which an owner of the Demised Premises would pay, having regard to the safeguarding of his investments and the preservation of the freehold.

(c) notwithstanding anything in this Lease to the contrary, Tenant does not hereby become responsible or in any manner whatsoever assume liability for environmental conditions or liabilities existing prior to its occupancy hereunder, or for such conditions not caused or permitted by Tenant.

Each of the items payable as Additional Rent shall be paid on or before the date when each becomes due, except Tenant may pay any tax, assessment, water rent or other governmental charge after it becomes due but before any penalty or interest accrues thereon. Landlord shall furnish to Tenant any and all bills for items payable as Additional Rent in sufficient time for payments to be made by Tenant. Landlord agrees to elect to pay any future assessment which may be levied against



the Demised Premises in the maximum number of installments permitted by law. Tenant shall furnish to Landlord, within thirty (30) days after the date upon which any such charge is payable by Tenant as hereinabove provided, official receipts of the appropriate taxing or governmental authority, or other proofs satisfactory to Landlord, evidencing the payment of Additional Rent. If Tenant shall fail to make any payment or to do any act required of it by any provision of this Lease, Landlord may make such payment or do such act and the amount of such payment, or the cost of doing such act, together with interest thereon at the rate of 18% per annum, shall be deemed Additional Rent payable by Tenant upon demand by Landlord. The making of any such payment or the doing of any such act by Landlord shall not constitute a waiver by Landlord of any right or remedy provided by this Lease upon Tenant's default in the making of such payment or the doing of such act. All taxes, assessments, and other governmental charges assessed against or levied upon the Demised Premises shall be apportioned as between Landlord and Tenant at the Commencement Date and Termination Date.

Tenant shall have the right to contest or review by appropriate proceedings or in any other manner permitted by law, at Tenant's sole cost and expense, in Tenant's name or in Landlord's name, or both, any tax, assessment or charge, and Landlord shall, without expense or charge to it, cooperate with Tenant and execute any documents or pleadings required for such purposes. If required by Landlord, Tenant shall furnish a surety company bond, or other security reasonably satisfactory to Landlord, against any liens by reason of such contest. The aforesaid contest by Tenant may include appeals from any judgments, decrees or orders until a final non-appealable determination shall be made by a court or governmental department or authority having jurisdiction in the matter.

6. **TRASH REMOVAL AND JANITORIAL SERVICES.** As Demised Premises are part of the Main Street Parking Garage complex, Tenant is part of a common trash removal

service provided by the Landlord. Tenant shall store all trash, rubbish and garbage in fully closed containers at the rear of the Demised Premises in the loading dock area off of Atlantic Street. Tenant shall not burn or otherwise inappropriately dispose of any trash, waste, rubbish or garbage in and or about the Demised Premises. Any expenses incurred by Landlord related to the removal of such inappropriate disposal shall be reimbursed by Tenant.

Tenant shall supply its own janitorial services.

7. **SECURITY DEPOSIT.** Tenant deposited with Landlord and Landlord retains a Security Deposit ("Deposit") in the amount of One Thousand Thirty Three Dollars and 50/100 (\$1,033.50) as security for the full and faithful performance by Tenant of all terms and covenants of this Lease required to be performed by Tenant. If at any time Tenant shall be in default of any of the covenants of this Lease, Landlord is entitled, at its discretion, to use the Deposit, or so much thereof, as may be necessary to rectify or cure such default. In the event that the Landlord utilizes the Deposit, Tenant shall promptly restore same to Landlord upon Landlord's demand. No interest shall be paid by Landlord to Tenant with respect to the Deposit. The Deposit, or the portion that remains, shall be returned to Tenant following the termination of this Lease, provided that Tenant has fully and faithfully carried out all its terms and covenants and paid up all its Base Rent, Percentage Rent, Additional Rent and/or adjustments and Late Charges.

8. **CHANGE IN SCOPE OF TAXATION.** If at any time during the term of this Lease, the method or scope of taxation prevailing on the date hereof shall be altered, modified or enlarged so as to cause the method of taxation to be changed, in whole or in part, so that in substitution for the real estate taxes now assessed there may be, in whole or in part, a capital levy or other imposition based on the value of the Demised Premises, or the rents received therefrom, or some other form of assessment based in whole or in part on some other valuation of the Landlord's real property comprising the Demised Premises, then the substituted tax or imposition



shall be payable and discharged by Tenant in the manner required pursuant to the law promulgated which shall authorize the change in the scope of taxation, and as required by the terms and conditions of this Lease.

Nothing contained in this Lease shall require Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of Landlord, or federal income or state income tax or excess profits or revenue tax, except to the extent such taxes; are imposed in whole or partial substitution for real property taxes.

If any tax which Tenant is required to pay as previously stated is a graduated tax, Tenant shall be required to pay only the portion thereof which would have been payable by Landlord if the Demised Premises were the only real property owned by Landlord.

9. **INSURANCE.** Tenant, at its own cost and expense, shall obtain and maintain during the Term insurance of the types and in the amounts described below. Unless otherwise specifically approved by the Landlord, general liability policies will be written in an "occurrence" ISO form approved for coverage in the Commonwealth of Virginia. The "City of Norfolk, VA, and its employees" will be included as "Additional Insured" on such policies. All insurance policies affected by this agreement shall be primary and noncontributory to any other insurance or self-insurance maintained by Landlord. Policy limits may be met via either a singular policy, or in combination with primary and excess, or umbrella, insurance policies. All policies shall provide that the Landlord will receive at least thirty (30) days written notice in the event of cancellation of, or material change in, any of the policies. If the Tenant fails to maintain the insurance as set forth in this Lease, Landlord shall have the right, but not the obligation, to purchase such insurance at Tenant's expense.

COMMERCIAL GENERAL LIABILITY INSURANCE (CGL) with a limit of not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate. CGL and shall cover liability arising from premises, operations, independent lessees, products-completed

operations, personal injury and liability assumed under insured contract.

**WORKER'S COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY INSURANCE:** The Tenant shall maintain the applicable statutory Workers' Compensation Insurance, and Employer's Liability Insurance with a limit of at least \$500,000 per accident/disease, and policy limit of \$500,000.

**PROPERTY INSURANCE:** Tenant further covenants that it will, at all times during the Lease Term and at its own cost and expense, carry insurance against damage by fire or other perils in an amount equal to the replacement value thereof on Tenant's inventory, furniture, fixtures and equipment and all parts of the Demised Premises for which the Tenant is responsible as described in this agreement.

**INSURANCE POLICIES/CERTIFICATE OF INSURANCE:** Tenant shall furnish the Landlord with two (2) copies of the policies, or a certificate(s) of insurance evidencing policies, required above in this Agreement. The certificate(s) shall specifically indicate that the insurance includes any extensions of coverage required herein. In the event of cancellation of, or material change in, any of the policies, the Tenant shall notify the Landlord within at least 14 days after receiving notice of such cancellation or policy change and provide evidence that insurance coverage is in place to meet the requirements of this agreement.. If coverage on said certificate(s) is shown to expire prior to completion of all terms of this lease, the Tenant shall furnish a certificate of insurance evidencing renewal of such coverage to the Landlord within 10 days of the effective date such renewal. All certificates shall be executed by a duly authorized representative of each insurer, showing compliance with the requirements of this agreement. Failure of the Landlord or the Landlord's designated agents for this Agreement, to (1) demand such certificates or other evidence of full compliance with these requirements, and, or (2) identify a deficiency from evidence that is provided shall not be construed as a waiver of the Tenant's obligation to maintain such insurance.

Each insurance policy shall be so written as to protect the Landlord and the Tenant, as their respective interests may appear, and the insurance policies shall include a waiver of subrogation. If the Tenant fails to provide such insurance, Landlord may terminate this Lease with ten (10) days notice to Tenant. Certificates of Insurance verifying all required insurance policies shall be delivered to the Landlord prior to the Tenant's occupancy or build-out of the Demised Premises.

Tenant agrees to look solely to the proceeds of Tenant's own insurer for indemnity against exposure for casualty losses of property or business interruption. Tenant warrants that its liability, property and business interruption insurers shall have no rights against Landlord by virtue of assignment, loan agreement or otherwise.



Tenant shall indemnify Landlord for and against any and all claims, demands, suits, actions and judgments of any kind or nature whatsoever, including costs and expenses, for any personal injury or property damage to any person, or property, arising or resulting, directly or indirectly, from the entry onto the Demised Premises by Tenant or Tenant's agents.

10. **UTILITIES.** The Demised Premises are individually metered for electrical service. Tenant shall make arrangements to have the electrical service to the Demised Premises billed directly to the Tenant and promptly pay for all charges when due in connection with the use of the Demised Premises.

Tenant shall pay Landlord, as Additional Rent, its prorated share of the expenses for providing HVAC, water and sewerage, and trash collection to the Demised Premises. Tenant and Landlord expressly agree that the monthly charge of One Hundred Twenty-Eight Dollars and 75/100 (\$128.75) shall be Tenant's prorated share of the HVAC, water and sewerage, and trash collection expenses provided to the Demised Premises and electricity and gas used in connection with the operation of the HVAC. This monthly charge shall be increased by three (3%) percent each year of term.

11. **REPAIRS.** Tenant shall keep and maintain the Demised Premises in a good and complete state of repair and condition, except for ordinary wear and tear. Tenant shall make all repairs and replacements of every kind and character, to include, but not be limited to, store front glass, and maintain the Demised Premises and the appurtenances belonging thereto, and will not call upon Landlord during the term of this lease for the making of any repairs or replacements whatsoever. All repairs and replacements shall:

- (a) be performed in a good and workmanlike manner,
- (b) be at least substantially equal in quality and usefulness to the original work,
- (c) be of first-class modern character, and



- (d) not diminish the overall value of the Demised Premises.

In this context, Demised Premises refers to the partitions, ceilings, floors and other improvements heretofore or hereafter constructed at Tenant's expense.

12. **REQUIREMENTS OF PUBLIC AUTHORITIES.** Tenant shall suffer no waste or injury in or about the Demised Premises and shall comply with all federal, state, county and municipal laws, ordinances and regulations applicable to the structure, use and occupancy of the Demised Premises, including, without limiting the generality of the foregoing, the making of any structural repairs that may be required in order to comply with said laws, ordinances and regulations. In addition, Tenant shall effect the correction, prevention and abatement of nuisances, violations or other grievances in upon or connected with the Demised Premises and shall also promptly comply with all rules, orders and regulations of the Board of Fire Underwriters and any insurance company insuring the Demised Premises. In this context, Demised Premises refers to the partitions, ceilings, floors and other improvements heretofore and hereafter constructed at Tenant's expense.

13. **LANDLORD'S RIGHT TO CURE.** Landlord and its agents and workmen shall have the right to enter into and upon the Demised Premises at all reasonable times for the purpose of inspection and examination of the state or repair and condition thereof. Landlord may, but shall not be obligated to make such repairs as shall be necessary as a consequence of any failure of Tenant to meet its obligations under this Lease. The cost of any such repairs undertaken by Landlord, together with interest thereon at the rate of 18% per annum, shall be deemed to be Additional Rent payable by Tenant upon demand by Landlord. The making of any such repairs by Landlord shall not constitute a waiver by Landlord of any right or remedy provided by this Lease upon Tenant's default in the making of repairs.

14. **NET RENT.** It is the purpose and intent of Landlord and Tenant that the rent shall

be absolutely net to Landlord, except as may be otherwise provided herein. The Base Rent specified in Section 4, shall be paid each month during the Term of this Lease without any abatement, deduction, set off or counterclaim, except as hereinafter provided, and all costs, expenses and obligations of every kind and nature whatsoever relating to the premises which may arise or become due during the Term of this Lease, unless the charge or obligation arises as a result of an Event of Default (as hereinafter defined) by Tenant hereunder, shall be paid each month by Tenant as set forth herein.

15.     **DESTRUCTION.** If, during the Term of this Lease, the Demised Premises or any part thereof, including portions of the building not occupied by the Tenant, shall be damaged by fire, storm, or other casualty, Landlord shall not be obligated to repair or rebuild the same, and if the Demised Premises become untenable due to fire, storm, or other casualty and would not be rendered tenantable by Tenant's discharge of the obligation to maintain and repair the Demised Premises, as therein defined, this lease shall immediately terminate, provided always that there shall be no cessation of rent if the damages shall have been the result of the negligence, default, or willful act of Tenant or its agents or employees.

16.     **INDEMNIFICATION.** Tenant shall indemnify and save harmless Landlord from all fines, penalties, costs, suits, proceedings, liabilities, damages, claims and actions of any kind arising out of the use and occupation of the Demised Premises by reason of any breach or nonperformance of any covenant or condition of this Lease by Tenant, or by Tenant's intentional act or negligence, and not caused in whole or in part by Landlord. This indemnification shall extend to all claims of any person or party for death or injury to persons and damage to any property, and to legal expenses, including reasonable attorney's fees, incurred by Landlord in the defense of such claims or incurred by Landlord as a result of a breach of any provision of this Lease by the Tenant, but does not extend to circumstances caused in whole or in part by Landlord. Tenant shall not be



responsible for damage to the building resulting from acts of nature or for structural damage which it is not the fault of Tenant with the exception of replacement of the glass storefront.

17. **NON-LIABILITY OF LANDLORD.** Landlord shall not be liable for any damage or injury which may be sustained by Tenant or any other person as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, gas, sewer, drains, leaders, gutters, valleys or the like, or of the electrical, or sprinkler, equipment, if any, in the Demised Premises; or by reason of the elements not caused in whole or in part by Landlord.

18. **ALTERATIONS.** Tenant covenants and agrees that it will not make any material improvements, changes, installations, renovations, additions or alterations in and about the Demised Premises without the prior written consent of Landlord. All such alterations and improvements are to be at the sole expense of the Tenant.

Replacement of signage in order to identify Tenant business must be in compliance with the City of Norfolk Zoning Ordinance.

19. **ASSIGNMENT AND SUBLETTING.** Tenant will not assign this Lease or sublet the Demised Premises.

20. **AIR AND WATER POLLUTION.** Tenant expressly covenants and agrees to indemnify, defend and save Landlord harmless against any claim, damage, liability, cost, penalty, or fine which Landlord may suffer as a result of air, noise or water pollution caused by Tenant in its use of the Demised Premises. Tenant covenants and agrees to notify Landlord immediately of any claim or notice served upon it containing any allegation that Tenant is causing air, noise, or water pollution. Tenant, in any event, will take immediate steps to halt, remedy or cure any such pollution caused by Tenant in connection with its use of the Demised Premises.

21. **COVENANT AGAINST LIENS.** Tenant agrees that it shall not encumber, or suffer or permit to be encumbered, the Demised Premises or the fee thereof by any lien, charge or



encumbrance, and Tenant shall have no authority to mortgage or hypothecate this Lease in any way whatsoever.

22. **ENVIRONMENTAL.**

(a) For purposes of this section:

(i) "Hazardous Substances" include any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource and Conservation Recovery Act (42 U.S.C. § 6901 et seq.) ("RCRA"), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.) ("CERCLA") or any other federal, state or local environmental law, ordinance, rule or regulation.

(ii) "Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, disposing, or dumping.

(iii) "Notice" means any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from any authority of the Commonwealth of Virginia, the United States Environmental Protection Agency (USEPA) or other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional act or omission resulting or which may result in the Release of Hazardous Substances into the waters or onto the lands of the Commonwealth of Virginia, or into waters outside the jurisdiction of the Commonwealth of Virginia or into the "environment," as such terms are defined in CERCLA. "Notice" shall include the imposition of any lien on any real property, personal property or revenues of the Tenant, including but not limited to the Tenant's, interest in the Demised Premises or any of the Tenant's property located thereon, or any violation of federal, state or local environmental laws, ordinances,

rules, regulations, governmental actions, orders or permits, or any knowledge, after due inquiry and investigation, or any facts which could give rise to any of the above.

(b) To the extent that Tenant may be permitted under applicable law to use the Demised Premises for the generating, manufacture, refining, transporting, treatment, storage, handling, disposal, transfer or processing of Hazardous Substances, solid wastes or other dangerous or toxic substances, Tenant shall insure that said use shall be conducted at all times strictly in accordance with applicable statutes, ordinances and governmental rules and regulations. Tenant shall not cause or permit, because of any intentional or unintentional act or omission, a Release of Hazardous Substances on the Demised Premises. If any such intentional or unintentional act or omission causes a Release of Hazardous Substance on the Demised Premises, Tenant shall promptly clean up and remediate such Release in accordance with the applicable federal, state and local regulations and to the reasonable satisfaction of Landlord.

(c) Tenant shall comply with all applicable federal, state, and local environmental laws, ordinances, rules and regulations, and shall obtain and comply with all permits required thereunder, any successor, or new environmental laws. Upon the receipt of any Notice, Tenant shall notify Landlord promptly in writing, detailing all relevant facts and circumstances relating to the Notice.

(d) The requirements of this section shall apply to any successor in interest to Tenant, whether due to merger, sale of assets or other business combination or change of control.

(e) Tenant hereby agrees to defend (with counsel satisfactory to Landlord) and indemnify and hold Landlord harmless from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable cleanup costs and attorney's fees arising under this indemnity) which may arise directly or indirectly from any use or Release of Hazardous Substances on the Demised Premises and losses and claims against Landlord resulting



from Tenant's failure to comply strictly with the provisions of this section. The provisions of this section shall survive the termination of this permission granted by this Agreement.

23. **SURRENDER BY TENANT AT END OF TERM.** Tenant will surrender possession of the Demised Premises and remove all goods and chattels and other personal property in the possession of Tenant by whomsoever owned, at the end of the Term, or at such other time as Landlord may be entitled to re-enter and take possession of the Demised Premises pursuant to any provision of this Lease, and leave the Demised Premises in as good order and condition as they were on the Commencement Date, reasonable wear and tear excepted. In default of surrender of possession and removal of goods and chattels at the time aforesaid, Tenant will pay to Landlord the rent reserved by the terms of this lease for such period as Tenant either holds over possession of the Demised Premises or allows its goods and chattels or other personal property in its possession at such time to remain in the Demised Premises, and in addition thereto, statutory penalties and all other damages which Landlord shall suffer by reason of Tenant holding over in violation of the terms and provisions of this Lease, including all reasonable claims for damages made by any succeeding tenant or purchaser of the Demised Premises against Landlord which may be founded upon delay by Landlord in giving possession of the Demised Premises to such succeeding tenant or purchaser, so far as such damages are occasioned by the holding over of Tenant.

If Tenant fails to remove all goods and chattels and other personal property in possession of Tenant, by whomsoever owned, at the end of the Term, or at such other time as Landlord may be entitled to re-enter and take possession of the Demised Premises pursuant to any provision of this Lease, Tenant hereby irrevocably makes, constitutes and appoints Landlord as the agent and attorney-in-fact of Tenant to remove all goods and chattels and other personal property, by whomsoever owned, from the Demised Premises to a reasonably safe place of storage, such



moving and storage to be at the sole cost and expense of Tenant, and Tenant covenants and agrees to reimburse and pay to Landlord all expenses which Landlord incurs for the removal and storage of all such goods and chattels. In addition, at the option of Landlord, Tenant shall be deemed to have abandoned such goods, chattels and other personal property and the same shall become the property of Landlord. Tenant shall reimburse and pay Landlord for all expenses incurred in the removing or disposing of the abandoned property.

No act or thing done by Landlord shall be deemed an acceptance of the surrender of the Demised Premises unless Landlord shall execute a written release of Tenant. Tenant's liability hereunder shall not be terminated by the execution by Landlord of a new lease of the Demised Premises.

24. **DEFAULT BY TENANT.** If before or during the Term, there shall occur any of the following events ("Events of Default"):

(a) Tenant makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or files an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of any material part of its assets, and such appointment shall not have been vacated; or

(b) if, within 60 days after the Commencement Date, any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within 60 days after the appointment without the consent or

acquiescence of Tenant of any trustee, receiver or liquidator of Tenant or of any material part of its assets, such appointment shall not have been vacated; or

(c) if the interest of Tenant in the Demised Premises shall be sold under execution or other legal process; or

(d) if Tenant shall fail to pay any installment of Base or Additional Rent within seven (7) days of the due date; or

(e) if Tenant shall fail to perform or observe any requirement, obligation, agreement, covenant or condition of this Lease, other than the payment of any installment of Base Rent or Additional Rent, and any such failure shall constitute for 15 days after Landlord gives Tenant notice thereof, or if such failure cannot be remedied within 15 days, then for a reasonable time thereafter, provided Tenant commences to remedy such failure within said 15 day period and prosecutes the same to completion with diligence; or

(f) if any representation or warranty contained in this Lease shall prove to be incorrect in any material respect on the date upon which it was made; then at any time following any of such Events of Default, Landlord, without waiving any other rights herein available to Landlord at law or in equity, may either (1) give Tenant notice of termination of this Lease, or (2) without terminating this Lease, give Tenant notice of Landlord's intention to re-enter and take possession of the Demised Premises, with or without legal process. The giving of either of such notices to Tenant shall terminate Tenant's right to possession of the Demised Premises under this Lease without prejudice, however, to the rights of Landlord to exercise all other available legal remedies and without discharging Tenant from any of its liabilities hereunder.

If Landlord elects to terminate Tenant's right to possession of the Demised Premises under this section following an Event of Default, Landlord may re-enter and take possession of the Demised Premises, with or without legal process, and Tenant hereby waives any claim for damages

as a result thereof, and Tenant shall be obligated to pay to Landlord as damages upon demand, and Landlord shall be entitled to recover of and from Tenant:

(a) all Base Rent and Additional Rent which are in arrears as of the date of termination of Tenant's right to possession, plus

(b) the cost to Landlord of all reasonable legal and other expenses and costs (including reasonable attorney's fees) incurred by Landlord in obtaining possession of the Demised Premises, in enforcing any provision of this lease, in preserving the Demised Premises during any period of vacancy, in making such alterations and repairs to the Demised Premises as the Tenant was required to make pursuant to the terms of this Lease and in re-letting the Demised Premises, including all reasonable brokerage commissions therefor, plus

(c) either:

(i) in the event of Landlord's giving notice of its intention to re-enter and take possession without terminating this Lease, damages (payable in monthly installments, in advance, on the first day of each calendar month following the giving of such notice and continuing until the date originally fixed herein for the expiration of the then current Term of this Lease) in amounts equal to the Base Rent and Additional Rent herein reserved, less the net amount of rent, if any, which may be collected and received by Landlord for the Demised Premises for and during the balance of the Term hereof; Landlord may re-let the Demised Premises, or any part or parts thereof and Landlord may grant concessions or charge a rental in excess of that provided in this Lease (Tenant shall have no right to any excess); or

(ii) in the event of Landlord's giving notice of termination of this Lease, an award for liquidated damages in an amount which, at the time of such termination, is equal to the excess, if any, of the installments of Base Rent and the aggregate of all sums payable hereunder as Additional Rent for the period which would otherwise have constituted the unexpired portion of



the then Term of this Lease, plus the value of all other considerations to be paid or performed by Tenant during such period, over the fair rental value of the Demised Premises, as of the date of such termination, for such unexpired portion of the then Term of this Lease, or any part thereof if re-let by Landlord for the unexpired Term of this Lease, or any part thereof. If Landlord shall elect to re-enter and take possession without terminating this Lease, Landlord shall have the right at any time thereafter to terminate this Lease for such previous default, whereupon the provisions of this subsection with respect to termination will thereafter apply. Landlord will make reasonable effort to mitigate its damages.

Landlord may sue for and collect any amounts which may be due pursuant to the provisions above from time to time as Landlord may elect, but no such suit shall bar or in any way prejudice the rights of Landlord to enforce the collection of amounts due at any time or time thereafter by a like or similar proceeding.

Tenant agrees to pay all costs of proceedings by Landlord for the enforcement of any breach of the terms and conditions of this Lease by the Tenant, including reasonable attorney's fees and expenses, which shall be deemed Additional Rent for the period with respect to which the Event of Default occurred, if Landlord is the prevailing party in such suit.

No remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. The receipt and acceptance by Landlord of Rent with knowledge of the default by Tenant in any of Tenant's obligations under this Lease shall not be deemed a waiver by Landlord of such default. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency an amount equal to the maximum allowed by any statute or rule of law in effect at the time when and governing the Proceedings, in which

the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

No waiver by Landlord of any Event of Default or any default by Tenant in any covenant, agreement or obligation under this Lease shall operate to waive or affect any subsequent Event of Default or default in any covenant, agreement or obligation hereunder, nor shall any forbearance by Landlord to enforce a right or remedy upon an Event of Default or any such default be a waiver of any of its rights and remedies with respect to such or any subsequent default or in any other manner operate to the prejudice of Landlord.

25. **LATE FEE.** For any payments of Base Rent or Additional Rent paid after the date such payments were due, Tenant shall pay a late fee of 5% of the amount not paid when due. The payment of any late fee shall not in any way be curative of any Event of Default and payments pursuant to this section shall not affect any of the Landlord's rights and remedies under Section 24.

26. **NO JOINT VENTURE.** It is hereby agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant, or between Landlord and any other party, or cause either party to be responsible in any way for the debts or obligations of the other party.

27. **QUIET ENJOYMENT.** Landlord covenants that Tenant, on paying the Rent and performing the covenants and conditions contained in this Lease, shall and may peaceably and quietly have, hold and enjoy the Demised Premises for the term aforesaid.

28. **CERTIFICATES BY TENANT AND LANDLORD.** Tenant and Landlord agree at any time and from time to time during the Term of this Lease, within ten (10) days after written request from the other, to execute, acknowledge and deliver to the requesting party or to a third party a statement in writing certifying that this lease is unmodified and in full force and effect



(or if there have been modifications, that the same is in full force and effect as modified and stating the modification), and the dates to which the Base Rent, Additional Rent and other charges have been paid in advance, if any, and stating whether or not, to the best knowledge of the party, the requesting party is in default in the performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which such party may have knowledge. Such third party shall have the right to rely upon the contents of any such written statement.

29. **NOTICES.** Whenever it is provided herein that notice, demand, request or other communication shall or may be given to or served upon either of the parties, or if either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or the Demised Premises, each such notice, demand, request or other communication shall be given in writing either by hand delivery, overnight courier or by mailing same by registered or certified mail return receipt requested, with proper postage pre-paid and any law or statute to the contrary notwithstanding, shall be given or served as follows:

Landlord: City of Norfolk  
Room 306, City Hall Bldg  
810 Union Street  
Norfolk, Virginia 23510  
Attn: Manager of Real Estate

Tenant: Rover Marine, Inc.  
P. O. Box 3125  
Norfolk, Virginia 23514  
Attn: Tom Van Benschoten

or at such other address as either of the parties may from time to time designate by written notice.

Every notice, demand, request or other communication hereunder shall be deemed to have been given or served at the time that the same shall be hand delivered or deposited in the United States mail, postage prepaid, in the manner aforesaid.

30. **CAPTIONS.** The captions to the sections of this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this lease or any part thereof nor in any way affect this Lease or any part thereof.

31. **COVENANTS AND CONDITIONS.** All of the terms and provisions of this Lease shall be deemed and construed to be "covenants" and "conditions" to be performed by the respective parties as though words specifically expressing or importing covenants and conditions were used in each separate term and provision hereof.

32. **WAIVER OF TRIAL BY JURY.** Landlord and Tenant hereby mutually waive their rights to trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, Tenant's use or occupancy of the Demised Premises, and any claim of injury or damage.

33. **DEFINITION OF TERM "LANDLORD".** When the term "Landlord" is used in this Lease, it shall be construed to mean and include only the then owner of the fee title of the Demised Premises. Upon transfer by Landlord of the fee title to the Demised Premises, Landlord shall give Tenant notice in writing of the name and address of Landlord's transferee. In such event, the then Landlord shall be automatically free and relieved from and after the date of such transfer of title of all personal liability with respect to the performance of any of the covenants and obligations on the part of Landlord herein contained to be performed, provided any such transfer and conveyance by Landlord is expressly subject to the assumption by the grantee or transferor of the obligations of Landlord to be performed pursuant to the terms and conditions of this Lease.

34. **BROKERAGE REPRESENTATION.** Landlord shall have no obligation for the payment of any real estate commission in regard to this Lease, and Tenant shall indemnify and hold harmless Landlord from and against any claim by a real estate agent for any commission relative to this Lease.



35. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties.

36. **APPLICABLE LAW.** This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, and any suit arising out of this Lease only shall be brought in the State or Federal Courts located in the State of Virginia. In the event of any such suit, the parties hereto consent to the personal jurisdiction of such courts and waive any defense based on improper venue.

37. **BIND AND INURE CLAUSE.** The terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of each of the parties hereto, and their respective successors and assigns.

38. **TENANT'S RECOURSE.** In any action or proceeding brought by Tenant against Landlord on this Lease, Tenant shall look solely to the Landlord's interest in the Demised Premises for the payment of any damages or satisfaction of any liabilities or obligations of Landlord, and no judgment obtained by Tenant shall be enforceable against, or a lien upon, any property of Landlord other than the Demised Premises.

39. **LANDLORD'S RIGHT TO ENTER.** Landlord and its agent shall have the right to enter into and upon the Demised Premises, after giving notice to Tenant, for the purpose of inspection and to make any repairs necessary to the Landlord's property.

40. **PARKING.** At the discretion of the Tenant, Landlord agrees to make available two (2) unreserved parking spaces for Tenant's use within the attached parking garage. Tenant is responsible for making arrangements with the City of Norfolk Parking Division and paying the costs of parking at published rates per space, per month.

41. **TENANT'S RIGHT OF ENTRY.** Landlord hereby grants Tenant the right to enter into the Demised Premises not more than thirty (30) days prior to the effective date of authorizing ordinance, solely at their own risk, for the purpose of building out the Premises in connection with the intended use. Landlord shall approve design or construction. Prior to entering the Premises, Tenant will deliver to the Landlord the Insurance Certificates as required in Section 9. If for any reason the Tenant shall not occupy the Demised Premises as permitted by this Lease and has, however, commenced build out for the proposed use prior to the effective date of authorizing ordinance, Tenant shall repair any damage to the Demised Premises and shall restore all disturbed areas to its original condition.

**IN WITNESS WHEREOF**, the parties have executed or have caused this Lease to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

**(SIGNATURE PAGES FOLLOW)**



**CITY OF NORFOLK**

By: \_\_\_\_\_ (SEAL)  
City Manager

**ATTEST:**

\_\_\_\_\_  
City Clerk

**COMMONWEALTH OF VIRGINIA,  
CITY OF NORFOLK, TO-WIT:**

I, \_\_\_\_\_, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, do hereby certify that Marcus D. Jones, City Manager, and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names are signed to the foregoing Lease Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public  
Registration No. \_\_\_\_\_

**APPROVED AS TO CONTENTS:**

\_\_\_\_\_  
Director of General Services

**APPROVED AS TO FORM AND CORRECTNESS:**

\_\_\_\_\_  
Deputy City Attorney

**ROVER MARINE, INC.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**COMMONWEALTH OF VIRGINIA**  
**CITY/COUNTY OF \_\_\_\_\_, to-wit:**

I, \_\_\_\_\_, a Notary Public in and for the City of \_\_\_\_\_, in the Commonwealth of Virginia, do hereby certify that \_\_\_\_\_ (Title) of Rover Marine, Inc., whose name is signed to the foregoing Lease Agreement, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public  
Registration No. \_\_\_\_\_



# Exhibit A

PHOTO SHOPS  
ON MAIN STREET

